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EXAMINER

MAURO JR, THOMAS J

ART UNIT

PAPER NUMBER

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13

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/703,349
Filing Date: October 31, 2000
Appellant(s): DAY ET AL.

Marilyn Smith Dawkins, Reg. No. 31,140
For Appellant

EXAMINER'S ANSWER

MAILED

OCT 04 2004

Technology Center 2100

This is in response to the appeal brief filed July 20, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 2, 3, 5 and 6 do not stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,539,099	Kellner	3-2003
6,404,438	Hatlelid et al.	6-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claim 3 is rejected under 35 U.S.C. 102(e) as being anticipated by Kellner (U.S. 6,539,099).

With respect to claim 3, Kellner teaches a method for communicating between participants through a network of computers, comprising:

analyzing images of at least one of the participants received as input for an actual physical gesture [**Kellner -- Figures 1 and 2 and Col. 4 lines 43-55 – Video camera collects images of user’s gestures and features**];

associating each of a plurality of physical gestures to separate commands of an application program interface for communicating in real time between the participants [**Kellner - Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24, Col. 8 lines 26-50, Col. 9 lines 11-21, Col. 9 lines 53-67 – Col. 10 lines 1-26, Col. 18 lines 20-41 and Col. 19 lines 41-56 – Gestures from the video camera are read into system and instructions or commands associated with the gesture cause the images to be altered accordingly. Each separate gesture captured at varying times, i.e. a user blinking, talking or smiling, inherently requires that separate information, i.e. data, which acts as an instruction or command, to the algorithms for**

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instructing them how to manipulate the image based upon the received input. Thus it is inherent that the information, i.e. data which instructs or commands the algorithms what to do, transmitted for instructing the character image to depict a user blinking would be completely different, i.e. separate, from the information transmitted for instructing the character image to depict a user smiling. Therefore, separate commands, i.e. the data which instructs the blender's algorithms of what to do to appropriately alter the image, are unique, i.e. separate, for each gesture, i.e. user blinking and user smiling]; and

transmitting an associated command associated with the actual physical gesture from the analyzed images to the application program interface to send a representation of the actual physical gesture within the real time communication for communicating between the participants [Kellner -- Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24, Col. 8 lines 34-50, Col. 9 lines 11-21, Col. 9 lines 53-67 – Col. 10 lines 1-26, Col. 18 lines 20-41 and Col. 19 lines 41-56 – After image from camera is analyzed, a character image is altered to represent the gesture made by the user by transmitting information, i.e. data, which act as commands to instruct the blender which algorithms to invoke to properly manipulate the image during chat session to the users on other receiving end. This information provides instructions for the blending algorithm to determine whether to apply lightening or darkening color delta's to alter the character image].

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellner (U.S. 6,539,099) in view of Hatlelid (U.S. 6,404,438).

Regarding claim 2, Kellner teaches the invention substantially as claimed, a method for interacting between participants through a network of computers, comprising:

analyzing successive video images received as input from a camera capturing video of at least one of the participants for an actual physical gesture made by the one participant [**Kellner - Figures 1 and 2 and Col. 4 lines 43-55 – Video camera collects images of user's gestures and features**]; and

automatically generating a command for the action to a software program enabling a real time communication [**Kellner -- Col. 4 line 29 – Real time communication is a chat session between the participants thereby sending a representation of the actual physical gesture within the real time communication [Kellner -- Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24, Col. 8 lines 34-50, Col. 9 lines 11-21, Col. 9 lines 53-67 – Col. 10 lines 1-26, Col. 18 lines 20-41 and Col. 19 lines 41-56 – After image from camera is analyzed, a character image is altered to represent the gesture made by the user by transmitting information, i.e. data, which act as commands to instruct the blender which algorithms to invoke to properly**

manipulate the image during chat session to the users on other receiving end. This information provides instructions for the blending algorithm to determine whether to apply lightening or darkening color delta's to alter the character image].

Kellner fails to explicitly teach determining a state of the actual physical gesture and accessing a table for an action associated with the determined state.

Hatlelid teaches a system for displaying a visual representation in a chat session which access a library of behavioral movements, i.e. table, to choose the movement associated with the gesture based upon the state, i.e. mood and/or intensity, of the gesture [Hatlelid -- Figure 3B, Col. 8 lines 13-17, Col. 8 lines 50-67 – Col. 9 lines 1-15, Col. 11 lines 49-67 – Col. 12 lines 1-22, Col. 14 lines 61-67 – Col. 15 lines 1-13 and lines 35-51 and Col. 19 lines 50-58 – State of a gesture refers to the mood/personality and intensity linked to a behavioral movement. For example, several behavioral movements can be associated with “Hello” in the library and, based upon the state of the gesture, will either animate the character to perform a small handshake or a big wave, for example, as a gesture depending upon the state].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate assigning different behavioral movements for a given trigger based upon the gesture state, as taught by Hatlelid into the visual chat system of Kellner, in order to provide a variety of different behavioral movements associated with a given trigger which further enhances and communicates valuable behavioral information to the recipient.

Regarding claim 5, this is a system claim corresponding to the method claimed in claim 2. It has similar limitations; therefore, claim 5 is rejected under the same rationale.

Regarding claim 6, Kellner-Hatlelid teach the invention substantially as claimed, wherein the associative mapping is a table [Hatlelid -- Figure 12a and Col. 18 lines 57-59 – Table, as is shown in figure 12a and library containing behavioral movements, link the triggers with the associated actions].

(11) Response to Argument

(A) Applicant contends that Kellner does not disclose “associating each of a plurality of gestures to separate commands of an application program interface for communicating in real time between the participants; and transmitting an associated command associated with the actual physical gesture to the application program interface for communicating between the participants, whereas claim 3 calls for this limitation.

In response to argument (A), Examiner asserts that, contrary to the Applicant’s arguments, Kellner does disclose both associating each of a plurality of gestures to separate commands of an application program interface for communicating in real time between the participants and transmitting an associated command associated with the actual physical gesture to the application program interface for communicating between the participants. As is shown in the rejection above, upon which Examiner directs the applicant’s attention, Kellner (See Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24, Col. 8 lines 26-50, Col. 9 lines 11-21, Col. 9 lines

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53-67 – Col. 10 lines 1-26, Col. 18 lines 20-41 and Col. 19 lines 41-56) discloses that algorithms, which are implemented as instructions coded into the program, are able to alter the images according to the gestures read into the system from the video camera. The information, i.e. data, received by the system will differ depending on whether the camera captures a user blinking, talking or smiling. This information then instructs the algorithms how to manipulate the images based upon the received input, i.e. user gesture. As was stated in the rejection above, the separate commands, i.e. the data which instructs the blender's algorithms of what to do to appropriately alter the images, are unique for each gesture made, i.e. blinking, smiling, etc. Furthermore, Kellner (See Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24, Col. 8 lines 34-50, Col. 9 lines 11-21, Col. 9 lines 53-67 – Col. 10 lines 1-26, Col. 18 lines 20-41 and Col. 19 lines 41-56) transmitting the command, i.e. data which instructs the algorithms how to alter the image, to the other users to properly manipulate the image during the chat session. During patent examination and prosecution, claims must be given their broadest reasonable interpretation. *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993); *In re Prater*, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969). Giving the instant claims their broadest reasonable interpretation, “associating each of a plurality of gestures to separate commands of an application program interface for communicating in real time between the participants; and transmitting an associated command associated with the actual physical gesture to the application program interface for communicating between the participants” is broad enough to read on the character image altering system based upon actual gestures made by a chat participant of Kellner.

(B) Applicant contends that Kellner in view of Hatlelid does not disclose determining a state of an actual physical gesture and accessing a table for an action associated with the determined state of the actual physical gesture, whereas claims 2 and 5 calls for this limitation.

In response to argument (B), Examiner asserts that, contrary to the Applicant's arguments, Kellner in view of Hatlelid does disclose determining a state of an actual physical gesture and accessing a table for an action associated with the determined state of the actual physical gesture. As is shown in the rejections to claims 2 and 5 above, upon which Examiner directs the applicant's attention, Hatlelid (See Figure 3B, Col. 8 lines 13-17, Col. 8 lines 50-67 – Col. 9 lines 1-15, Col. 11 lines 49-67 – Col. 12 lines 1-22, Col. 14 lines 61-67 – Col. 15 lines 1-13 and lines 35-51 and Col. 19 lines 50-58) discloses a state of a gesture, i.e. the mood/personality and intensity linked to a behavioral movement made by one of the participants. For example, several behavioral movements by which the character image can be animated depend upon the state of the gesture, i.e. whether it is an introverted or extroverted action. In order to determine the associated gesture, a library, i.e. table, is accessed to provide the appropriate gesture which is linked to the state. Additionally, Applicant (See Paper #4 filed January 6, 2004, Page 7 lines 15-18) appears to be arguing that the state of the gesture refers to the number of occurrences of a particular gesture, i.e. a first or second occurrence. This language does not appear anywhere within the claims and therefore Applicant cannot argue features not claimed. During patent examination and prosecution, claims must be given their broadest reasonable interpretation. *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057,

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1059 (Fed. Cir. 1993); *In re Prater*, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969).

Giving the instant claims their broadest reasonable interpretation, “determining a state of an actual physical gesture and accessing a table for an action associated with the determined state of the actual physical gesture” is broad enough to read on the state based gesture animation system of Hatlelid.

For the above reasons, it is believed that the rejections should be sustained.

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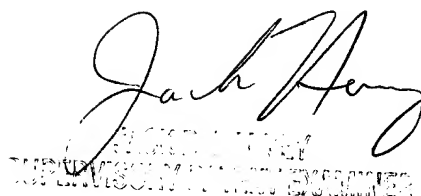
Respectfully submitted,

David Wiley



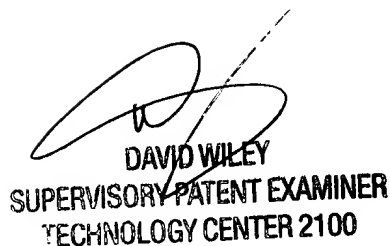
TJM

September 29, 2004



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